Supreme Court of the United States

OCTOBER TERM, 1933.

No. 670.

HOME BUILDING AND LOAN ASSOCIATION,

Appellant,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL, HIS WIFE,

Appellees.

PETITION FOR REHEARING.

Comes now the above mentioned appellant, Home Building and Loan Association, and presents this, its petition for a rehearing of the above entitled cause, and in support thereof respectfully shows:

1. That a careful study of the opinion of this Court shows that the majority opinion is based primarily on an assumption of facts which are not the true facts in the cause, because:

(a) Appellees argued and in a great measure presented facts entirely outside the record and hence not a part of the cause and not properly before the Court.

(b) That on material points said argument was erroneous, only partially true, partially untrue and misleading.

(c) That specifically as to the quotation of the Attorney General in Note 4 of the majority opinion of this Court, the

contents of said quotation is partially untrue and only partially true and, on the whole, misleading. That appellant was afforded no opportunity to reply thereto or to challenge the truth of those parts not true or to call attention to those parts misleading. That no basis for said statements are in the record. That the Attorney General, in connection with the statements quoted and following the same, stated also, in substance, that in some counties in Minnesota no mortgage foreclosure sale had not been permitted for many months prior to the hearing through the action of riotous mobs; that said statement is not true in fact, not in the record and that appellant had no opportunity to challenge the same; that appellant believes that said statement is the statement referred to in the last sentence of said Note 4, which sentence is not a quotation.

2. That on the oral argument, the appellant had no opportunity, because of lack of time, to deny, refute or clarify the foregoing matters. That if time had been available, appellant would have presented argument to show:

(a) That appellees' argument and statement of facts was largely outside the record, particularly as to the statement of conditions, existence of emergency, etc.

(b) That said portion of appellees' argument was erroneous and misleading and is denied by the appellant.

(c) That the true basis for the trial court's order requiring the payment of $40.00 per month was not as stated by counsel for the appellees on oral argument. That such payments are not consideration, either adequate or partial, for the extended time granted, because the payments of rental value are applied on the payment of taxes, insurance interest and mortgage indebtedness. The payment of taxes

and insurance are required by law in order to redeem (See Statute 9648 in Appendix A, *infra*), and the payment of mortgage indebtedness and interest are required by the statute, Section 9626 (Appellant's Brief, Appendix D, p. 56). It follows that the payments of rental value are not in addition to, but only a part of, the redemption money. That, therefore, Chapter 339 gives nothing to the mortgagee after the extension other than he would have gotten if the extension had been arbitrary and without any conditions as in the "prior cases" if there is a redemption and hence this case cannot be distinguished from the prior cases cited in the appellant's brief and relied upon by the appellant, and is controlled by these cases, and that, therefore, the decision below should be reversed.

3. It is apparent that for the same reasons the opinion of the majority assumes that said Chapter 339 is beneficial to the public welfare as claimed by the Legislature. That such claim and belief are actually contrary to the opinions of officials of the United States Government in control of emergency agencies and activities designed to cure and alleviate the depression, namely: the Chairman of the Board of the Reconstruction Finance Corporation and the President of the Home Owners Loan Corporation. Within the last ten days both these officials have publicly asserted that moratory legislation of the type of Chapter 339 is retarding the recovery and the refinancing of real estate mortgage loans by private lenders. That the opinions of these officials of the federal government are entitled to the same weight as were the reports and bulletins of the Department of Agriculture of the United States which were cited and used in *Price vs. Illinois* (1915), 238 U. S. 446, 35 S. Ct. 892, 59 L. Ed. 1400. These statements by these officials had

not been made at the time of the oral argument herein, but they are beyond any dispute. That moratory legislation is detrimental to the public welfare is established by the prior decisions of this Court cited and relied on by the appellant.

4. That with additional time for argument, on a rehearing, all of the above matters could and would be adequately presented by the appellant. That such a true and fully developed presentation of the actual facts would be of real value to the Court, and in our opinion, on the basis thereof, this Court might well determine that the judgment below should be reversed.

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted, and that the judgment of the Supreme Court of the state of Minnesota be, upon further consideration, reversed.

Respectfully submitted,

ALFRED W. BOWEN,
KARL H. COVELL,
Counsel for Appellant.

CERTIFICATE OF COUNSEL.

We, Alfred W. Bowen and Karl H. Covell, Counsel for the above named appellant, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

ALFRED W. BOWEN,
KARL H. COVELL,
Counsel for Appellant.

APPENDIX "A."

9648. *Purchaser at foreclosure, execution or judicial sale may pay taxes, assessments, insurance premiums, or interest.*—The purchaser at any sale, upon foreclosure of mortgage or execution or at any judicial sale during the year of redemption, may pay any taxes or assessments on which any penalty would otherwise accrue, and may pay the premium upon any policy of insurance procured in renewal of any expiring policy upon mortgaged premises, and may in case any interest or installment of principal upon any prior or superior mortgage is in default or shall become due during such year of redemption, pay the same, and in all such cases, the sum so paid, with interest, shall be a part of the sum required to be paid to redeem from such sale. Such payments shall be proved by the affidavit of the purchaser, his agent or attorney, stating the items and describing the premises, which must be filed for record with the register of deeds, and a copy thereof shall be furnished to the sheriff at least ten days before the expiration of the year of redemption.